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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Melvin Kolb, Inc., Alma Kolb,
and Dennis Kolb

Respondents

) P & S Docket No. D-99-0006
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DECISION WITHOUT HEARING
BY REASON OF DEFAULT WITH RESPECT
TO RESPONDENT MELVIN KOLB, INC.

Preliminary Statement

This is a disciplinary proceeding under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. § 181 et seq.), herein referred to as the Act, instituted by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection Packers and Stockyards Programs, United States Department of Agriculture, charging that the financial condition of Melvin Kolb, Inc., a Pennsylvania corporation, does not meet the requirements of the Packers and Stockyards Act, and that Respondents Melvin Kolb, Inc., Dennis Kolb, and Alma Kolb willfully violated the Act.

Copies of the complaint and the Rules of Practice (7 C.F.R. § 1.130 et seq.) governing proceedings under the Act were served upon Respondent Melvin Kolb, Inc. by certified mail received November 19, 1998. Respondent Melvin Kolb, Inc. was informed in a letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer would constitute an admission of all the material allegations contained in the complaint.

Respondent Melvin Kolb, Inc. has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint pertaining to Respondent Melvin Kolb, Inc., which are admitted by Respondent Melvin Kolb, Inc.'s failure to file an answer, are adopted and set forth herein as findings of fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. (a) Melvin Kolb, Inc. (hereinafter referred to as Respondent) is a corporation whose business mailing address is 621 Willow Road, Lancaster, Pennsylvania 17601.

(b) Respondent was at all times material herein:

(1) Engaged in the business of a dealer buying and selling livestock in commerce for its own account;

(2) Registered with the Secretary of Agriculture as a dealer buying and selling livestock in commerce for its own account.

(c) Respondent ceased its operations subject to the Act on or about February 28, 1997 and is no longer an active registrant with the Secretary of Agriculture.

2. The financial condition of Respondent does not meet the financial requirements of the Act in that:

(a) As of November 30, 1995, Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$928,905.00 and current assets totaling \$432,028.00 resulting in an excess of current liabilities over current assets of \$496,877.00.

(b) As of May 31, 1996, Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$735,755.28 and current assets totaling \$280,557.12 resulting in an excess of current liabilities over current assets of \$455,198.16.

(c) As of June 30, 1996, Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$755,032.00 and current assets totaling \$326,440.83 resulting in an excess of current liabilities over current assets of \$428,591.17.

(d) As of February 28, 1997 (the date Respondent ceased its operations subject to the Act), Corporate Respondent's current liabilities exceeded its current assets. As of that date, Corporate Respondent had current liabilities totaling \$1,754,822.00 and current assets totaling \$165,980.00 resulting in an excess of current liabilities over current assets of \$1,588,842.00.

3. Respondent, during the period set forth in paragraph III of the Complaint, operated subject to the Act while its current liabilities exceeded its current assets.

4. (a) Respondent, on or about the dates and in the transactions set forth in paragraph IV(a) of the complaint, purchased livestock and, in purported payment, issued checks which were returned unpaid by the bank upon which they were drawn because Respondent did not have sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented.

(b) Respondent, on or about the dates and in the transactions set forth in paragraph IV(a), (b), (c), and (d) of the purchased livestock and failed to pay, when due, the full purchase

price of such livestock.

(c) As set forth in paragraph IV(e) of the complaint, as of October 1, 1998, at least \$320,905.00 of the livestock amounts set forth in Finding of Fact 4 above remained unpaid.

5. As set forth in paragraph V of the complaint, Respondent failed to keep and maintain accounts, records, and memoranda which fully and accurately disclosed all transactions in its business as a market agency and dealer under the Act, including, but not limited to purchase and sales invoices for all transactions, records of all trades, documents reflecting Respondent's inventory of livestock, and records showing Respondent's true and accurate prices and payments for livestock.

Conclusions

By reason of the facts found in Finding of Fact 2 herein, the financial condition of Respondent does not meet the financial requirements of the Act (7 U.S.C. § 204).

By reason of the facts found in Finding of Fact 3 herein, Respondent willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)).

By reason of the facts found in Finding of Fact 4 herein, Respondent willfully violated sections 312(a) and 409(a) of the Act (7 U.S.C. §§ 213(a), 228b(a)).

By reason of the facts found in Finding of Fact 5 herein, Respondent violated section 401 of the Act (7 U.S.C. §221).

By reason of the facts found in Finding of Fact 6 herein, Respondent violated section 401 of the Act (7 U.S.C. §221).

Order

Respondent Melvin Kolb, Inc., its officers, directors, agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from:

1. Purchasing livestock while insolvent, that is, while its current liabilities exceed their current assets;
2. Issuing checks in payment for livestock purchases without maintaining sufficient funds on deposit and available in the account upon which such checks were drawn to pay such checks when presented;
3. Failing to pay, when due, the full purchase price of livestock; and
4. Failing to pay the full purchase price of livestock.

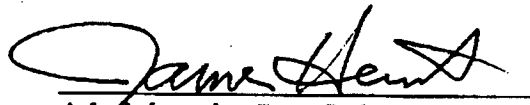
Respondent Melvin Kolb, Inc. shall keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions involved in their operations subject to the Act, including purchase and sales invoices for all transactions, records of all trades, documents reflecting inventory of livestock, and documents of purchase that completely and accurately reflect the prices paid and payments received for livestock.

Respondent Melvin Kolb, Inc. is suspended as a registrant under the Act for a period of five (5) years and thereafter until solvency is demonstrated, *provided*, however, that upon application to the Packers and Stockyards Programs, a supplemental order may be issued at any time after the expiration of 270 days upon demonstration by Respondent that it is solvent and restitution has been made to all unpaid sellers of livestock.

This decision shall become final and effective without further proceedings 35 days after the date of service upon Respondent Melvin Kolb, Inc., unless it is appealed to the Judicial

Officer by a party to the proceeding within 30 days pursuant to section 1.145 of the Rules of Practice, 7 C.F.R. § 1.145. Provisions of this order shall become effective on the sixth day after service of this order on Respondent.

Issued this 3rd day of March 1999


Administrative Law Judge